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In re Application of
Schuegraf and Thakur
Application No. 09/332,271
Filed: June 11, 1999
Attorney Docket No. MI22-532
For: Methods for Forming Wordlines,
Transistor Gates, and Conductive
Interconnects, and Wordline, Transistor
Gate, and Conductive Interconnect
Structures

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed
January 12, 2000.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on June 11, 1999, without an executed oath or declaration. Accordingly, on July 2, 1999, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing.

In response, on January 12, 2000 (certificate of mailing dated Monday, January 3, 2000), applicant filed the present petition, the petition fee, the surcharge, a declaration, three declarations of facts, a copy of the Assignment, and a request for a four (4) month extension of time and fee.

In her declaration of facts, Karen Brasefield, a legal assistant, states that on May 17, 1999, she mailed "papers pertaining to the application" to Mr. Schuegraf, the non-signing inventor, at his address in Fountain Hills, Arizona, but the papers were not signed or returned. Ms. Brasefield further states that on July 19, 1999, "the signature papers" were mailed to the inventor at his address in Fountain Hills, Arizona via Express Mail/Return

Receipt Requested. The return receipt was signed on July 21, 1999, and returned to applicant with a new address. Ms. Brasefield does not indicate who signed the return receipt. A copy of the return receipt does not accompany the present petition.

In his declaration of facts, David G. Latwesen, a shareholder of the law firm, indicates that he spoke to Mr. Schuegraf on September 22, 1999, by telephone and asked him if he would be willing to execute outstanding papers for several applications. Mr. Schuegraf refused to sign any papers. A copy of the statement, made by Mr. Latwesen immediately after the telephone conversation, is included with the petition.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1), (2) and (4) as set forth above.

As to item (1), Ms. Brasefield states that she mailed "papers pertaining to the application" and "signature papers" to the inventor. However, it is unclear whether applicant mailed a complete copy of the application papers to Mr. Schuegraf for his review. Moreover, Ms. Brasefield did not indicate whether she sent a copy of the application papers to the new address stated on the return receipt. Unless the Mr. Schuegraf was presented with a copy of the application papers (specification, claims and drawings), Mr. Schuegraf could not attest that he has "reviewed and understands the application papers," and therefore, could not sign the declaration which he was given. Accordingly, Rule 47 applicant failed to show or provide proof that the inventor has refused to sign the declaration. See MPEP 409.03(d). Applicant should show that a copy of the application papers was presented to the inventor, but that he did not respond to the request that he sign the oath/declaration in order to show that the inventor has refused to join in the application. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events.

On July 21, 1999, a return receipt was signed and sent to applicant with a new address. When applicant became aware of the new address, applicant should have sent a complete copy of the application papers to the inventor's current address to ensure receipt of such. It is unclear whether applicant mailed a copy of the application papers to the inventor's current address. Moreover, applicant stated that the return receipt was signed but did not indicate if the inventor signed it. Therefore, without a copy of the signed return receipt, the Office is unable to determine whether the inventor was presented with a copy of the application papers in accordance with 37 CFR 1.47. Accordingly, applicant should send a complete copy of the application papers, including the specification, claims and drawings to Mr. Schuegraf at his **last known address**, with a request that he sign the declaration for the patent application.

As to item (2), the non-signing inventor's last known address as stated in the present petition differs from the address as indicated in the Declaration. Applicant must provide an explanation as to why these addresses differ. If the address on the declaration is incorrect, applicant must submit a **new** oath or declaration, which sets forth the non-signing inventor's correct residence and post office address.

As to item (4), a statement of the inventor's last known address is required. Applicant states that the inventor's last known address is Aliso Viejo, California. However, applicant mailed papers pertaining to the application to a different address in Fountain Hills, Arizona.

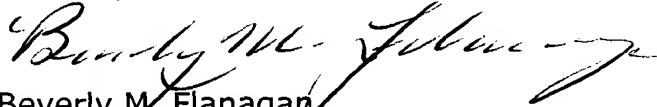
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
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Telephone inquiries related to this decision may be directed to Petitions Attorney Christina T. Tartera at (703) 308-5589.


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